Supreme Court, U. S.
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MICHAEL RODAK, JR.

No. 75-1486

# In the Supreme Court of the United States

OCTOBER TERM, 1976

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WAYNE RONALD WHITAKER, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The court of appeals rendered no opinion.

### JURISDICTION

The judgment of the court of appeals was entered on February 10, 1976. A petition for rehearing was denied on March 15, 1976 (Pet. App. 27a). The petition for a writ of certiorari was filed on April 14, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether Customs Patrol agents had probable cause to search petitioner's camper.

### STATEMENT

Following a jury-waived trial in the United States District Court for the Southern District of Texas, petitioner was convicted of three counts charging importation of marihuana, possession of marihuana with

intent to distribute, and conspiring to possess marihuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1), 846, and 952(a). He was sentenced to concurrent terms of four years' imprisonment on each count, to be followed by two years' special parole. The court of appeals affirmed *per curiam* (Pet. App. 13a).

The facts are not in dispute and are fairly summarized in the opinion of the district court (Pet. App. 2a-3a):

> Customs Officers stationed in Miami, Florida, had received information from a previously reliable source that a person by the name of Whitaker would attempt to drive a 1971 black Chevrolet truck bearing a specified Florida license plate into the United States from the Republic of Mexico via Brownsville. The suspect would be carrying a load of marihuana which would be hidden in secret compartments in the truck. Customs Officers in Miami, Florida, passed this information on to Customs Officers stationed at Brownsville, Texas.
>
> On February 27, 1975, at approximately 8:00 p.m. the above described black Chevrolet pickup truck driven by the Defendant Wayne Ronald Wittaker [*sic*] arrived at the B&M Bridge in Brownsville, Texas, from Matamoros, Mexico. Because Customs had a lookout on this truck it was referred to secondary where [three officers] searched the cab and camper sections of the truck without finding any marihuana.[1] The vehicle was then released, but not before Customs had arranged for Officer Kitchen to tail-out the vehicle as it left the bridge.

[1]The search did not reveal any hidden compartments. However, one of the officers found a pistol wrapped in a cloth underneath the front seat (Tr. 25).



From the bridge, petitioner drove the camper to a nearby restaurant where he parked. He then whistled and waved to a man, later identified as John Meola, whom officers had seen walking from the bridge carrying a knapsack. Meola ran over to the camper and got in (Tr. 48). Petitioner and Meola then drove out of Brownsville on a secondary highway, roughly parallel to the border, under the surveillance of Customs officers who followed in several cars and a helicopter. Surveillance was maintained until petitioner turned off the highway down a dirt road, when he was out of sight for about two minutes (Pet. 49-52; Pet. App. 3a). After petitioner's vehicle returned to the highway, the officers stopped and searched it. Concealed in secret compartments in the camper the agents found 47 bags of marihuana weighing approximately 126 pounds (Pet. App. 3a).

## ARGUMENT

The "factual and practical considerations" (*Brinegar* v. *United States*, 338 U.S. 160, 175) upon which the second search was based were reasonable under Fourth Amendment standards. Customs officials had received exceptionally specific information, from a source proved reliable on numerous occasions (Tr. 11-12), that one Whitaker would attempt to smuggle contraband into the country. Petitioner thereafter entered at the location the informant had named, in a vehicle that matched in make, model, age, color, and license number the one the informant had described. Cf. *Draper* v. *United States*, 358 U.S. 307. Although no drugs were found in the initial search, customs agents did find a gun under the front seat of the truck and, as the district court noted (Pet. App. 6a), they "observed that right after the vehicle left the bridge it picked up a passenger on foot with a knapsack who had apparently crossed the bridge concurrently with the vehicle," to whom petitioner

waved and whistled. Thereafter, petitioner and his passenger drove out of Brownsville on a secondary road, and, when they turned off onto a dirt road for several minutes, eluded the officers who had been watching them.

In light of the information customs officials had before petitioner reached the border, and in light of petitioner's activities after he left the border checkpoint, there was probable cause for a second search. See *United States* v. *Nieto*, 510 F. 2d 1118 (C.A. 5); *United States* v. *Bowman*, 502 F. 2d 1215 (C.A. 5).[2]

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[2]Petitioner's contention that the scope of the second search violated his Fourth Amendment rights is insubstantial. The search did not involve the "disassembly" (Pet. 5) of his vehicle but only the removal of several screws from two secret compartments in the interior of the camper (Tr. 64-66).

Furthermore, since the district court correctly found that the customs agents had probable cause for the search (Pet. App. 7a), there is no need to consider whether the search could also be justified as an "extended border search" (see Pet. App. 4a-6a).